

FIRST REGULAR SESSION

HOUSE BILL NO. 1192

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SMITH.

2484L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 650.058, RSMo, and to enact in lieu thereof one new section relating to restitution received by wrongfully imprisoned persons.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 650.058, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 650.058, to read as follows:

650.058. 1. Notwithstanding the sovereign immunity of the state, any individual who was found guilty of a felony in a Missouri court and was later determined to be actually innocent of such crime solely as a result of DNA profiling analysis may be paid restitution. The individual may receive an amount of [fifty] **one hundred twenty-eight** dollars per day for each day of postconviction incarceration for the crime for which the individual is determined to be actually innocent.

The petition for the payment of said restitution shall be filed with the sentencing court. For the purposes of this section, the term "actually innocent" shall mean:

(1) The individual was convicted of a felony for which a final order of release was entered by the court;

(2) All appeals of the order of release have been exhausted;

(3) The individual was not serving any term of a sentence for any other crime concurrently with the sentence for which he or she is determined to be actually innocent, unless such individual was serving another concurrent sentence because his or her parole was revoked by a court or the board of probation and parole in connection with the crime for which the person has been exonerated; and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (4) Testing ordered under section 547.035, or testing by the order of any state or federal
18 court, if such person was exonerated on or before August 28, 2004, or testing ordered under
19 section 650.055, if such person was or is exonerated after August 28, 2004, demonstrates a
20 person's innocence of the crime for which the person is in custody. Any individual who receives
21 restitution under this section shall be prohibited from seeking any civil redress from the state,
22 its departments and agencies, or any employee thereof, or any political subdivision or its
23 employees. This section shall not be construed as a waiver of sovereign immunity for any
24 purposes other than the restitution provided for herein. The department of corrections shall
25 determine the aggregate amount of restitution owed during a fiscal year. If insufficient moneys
26 are appropriated each fiscal year to pay restitution to such persons, the department shall pay each
27 individual who has received an order awarding restitution a pro rata share of the amount
28 appropriated. Provided sufficient moneys are appropriated to the department, the amounts owed
29 to such individual shall be paid on June thirtieth of each subsequent fiscal year, until such time
30 as the restitution to the individual has been paid in full. However, no individual awarded
31 restitution under this subsection shall receive more than thirty-six thousand five hundred dollars
32 during each fiscal year. No interest on unpaid restitution shall be awarded to the individual. No
33 individual who has been determined by the court to be actually innocent shall be responsible for
34 the costs of care under section 217.831.

35 2. If the results of the DNA testing confirm the person's guilt, then the person filing for
36 DNA testing under section 547.035, shall:

37 (1) Be liable for any reasonable costs incurred when conducting the DNA test, including
38 but not limited to the cost of the test. Such costs shall be determined by the court and shall be
39 included in the findings of fact and conclusions of law made by the court; and

40 (2) Be sanctioned under the provisions of section 217.262.

41 3. A petition for payment of restitution under this section may only be filed by the
42 individual determined to be actually innocent or the individual's legal guardian. No claim or
43 petition for restitution under this section may be filed by the individual's heirs or assigns. An
44 individual's right to receive restitution under this section is not assignable or otherwise
45 transferrable. The state's obligation to pay restitution under this section shall cease upon the
46 individual's death. Any beneficiary designation that purports to bequeath, assign, or otherwise
47 convey the right to receive such restitution shall be void and unenforceable.

48 4. An individual who is determined to be actually innocent of a crime under this chapter
49 shall automatically be granted an order of expungement from the court in which he or she pled
50 guilty or was sentenced to expunge from all official records all recordations of his or her arrest,
51 plea, trial or conviction. Upon granting of the order of expungement, the records and files
52 maintained in any administrative or court proceeding in an associate or circuit division of the

53 court shall be confidential and only available to the parties or by order of the court for good cause
54 shown. The effect of such order shall be to restore such person to the status he or she occupied
55 prior to such arrest, plea or conviction and as if such event had never taken place. No person as
56 to whom such order has been entered shall be held thereafter under any provision of any law to
57 be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite
58 or acknowledge such arrest, plea, trial, conviction or expungement in response to any inquiry
59 made of him or her for any purpose whatsoever and no such inquiry shall be made for
60 information relating to an expungement under this section.

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